IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

1) CRIMINAL WRIT PETITION NO. 2194 OF 2006.
2) CRIMINAL WRIT PETITION NO. 2195 OF 2006.
3) CRIMINAL WRIT PETITION NO. 2196 OF 2006.
4) CRIMINAL WRIT PETITION NO. 2197 OF 2006.
5) CRIMINAL WRIT PETITION NO. 2198 OF 2006.
AND
6) CRIMINAL WRIT PETITION NO. 2199 OF 2006.

1. S.V.S.Raghavan,
residing at Flat No.2, Door No.1,
Prithvi Avenue, Abhiramapuram,
Chennai 600 018.

2. S.C.Mittal, aged 77 years,
residing at 122, Basant Enclave,
Rao Tularam Marg,
New Delhi 110 057.

3. C.N.Ramachandran,
aged about 74 years, residing
at New No.28, Maharaja Surya
Road, Alwerpet, Chennai 600 018.

4. K.Lakshminarayanan,
aged about 74 years, residing
at No.911, 21st Main 38th
Cross IV, "T" Block, Jaya Nagar,
Bangalore 560 041. ... Petitioners.
(In all petitions.)

Versus.

1. State of Maharashtra.

2. Ind Seam Services Limited,
7/10, Botawala Building,
3rd floor, Opp: Horniman Circle,
Fort, Mumbai 400 023. ... Respondents
(In all Petitions.)

Shri T.J.Pandian for the Petitioners.

Shri S.V.More, A.P.P. for Respondent No.1-State in
Cr.WP No.2194/06.

Shri A.S.Shitole, A.P.P. for Respondent No.1-State in
Cr.WP. 2195/06, 2196/06 & 2197/06.

Shri Y.M.Nakhawa, A.P.P. for the Respondent No.1-State
in Cr.WP 2198/06 and 2199/06.

Ms.Nipa Singh i/by M/s.Haresh Menon & Co. for
Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 17th October, 2006.

ORAL JUDGMENT:

1. Rule. The learned A.P.P. waives service for the 1st Respondent. The learned Advocate for the 2nd Respondent waives service. Taken up for hearing forthwith.

2. Since the facts of these petitions are identical, I am referring to the facts of the case of Writ Petition No.2194 of 2001. The Petitioners in the petitions are arraigned as Accused nos.2, 5, 6 and 8 in a complaint filed by the 2nd Respondent under section 138 of the Negotiable Instruments Act, 1881. The Petitioners are aggrieved by the direction issued by the learned Magistrate on 12th September 2006 directing the Advocate appearing for the Petitioners to keep the Petitioners present on 12th October 2006.

3. The learned Counsel appearing for the Petitioners submitted that the Advocate appearing for the Petitioners is regularly attending the complaint on various dates fixed by the trial Court. He pointed out that the Petitioners have already given authority to their Advocates to record the plea. He submitted that considering the advanced ages of the Petitioners, the learned Magistrate ought to have granted permanent

exemption. He submitted that the direction issued against the Petitioners to remain personally present by the learned Judge is uncalled for.

4. The learned Counsel appearing for the 2nd Respondent submitted that the complaint is being delayed. She pointed out that the original complaint is filed in the year 1997 and for one reason or the other, the hearing of the complaint is delayed. She submitted that if this Court is inclined to grant protection to the Petitioners, hearing of the complaint be ordered to be expedited.

5. I have considered the submissions. The 1st and 3rd Petitioners are residents of Chennai. The age of the 1st Petitioner is stated to be 77 years and the age of the 2nd Petitioner is stated to be 74 years. The 3rd Petitioner is a permanent resident of New Delhi and his present age is 77 years. The 4th Petitioner is stated to be a permanent resident of Bangalore whose present age is 74 years. It is submitted that the Petitioners are suffering from various ailments. On 7th October 2004, the Petitioners have filed in the trial Court an authority in writing in favour of the Advocates appointed by them to accept/record plea on their behalf. They have also stated that they will not dispute their identity as the accused. There is nothing on record to show that the Advocates appointed by the Petitioners

have remained absent.

6. In view of the decision of the Apex Court in the case of Bhaskar Industries Ltd. v/s. Bhiwani Denim and Apparel Ltd. and others (AIR 2001 Supreme Court 3625), the learned Magistrate ought to have granted exemption to the Petitioners atleast till the stage of recording of the statement under section 313 of the Code of Criminal Procedure, 1973. The direction given on 12th September 2006 is uncalled for. A perusal of the Roznama shows that repeatedly applications were made by the Petitioners for grant of exemption. It is obvious that lot of time is spent by the learned Judge on consideration of the applications made by the Petitioner on various dates. This appears to be one of the reasons why the hearing of the complaint is delayed. Considering the respective places of residence of the Petitioners and their old age, it is unfair to insist on their personal presence in Mumbai. The Petitioners are entitled for grant of exemption.

7. Hence the following order is passed:

i) The Petitioners are exempted from appearing personally in the Complaint till the stage of recording of statement under section 313 of the Code of Criminal Procedure, 1973 subject to condition that the Petitioners will be

represented by their Advocates on every date. At the stage of recording of statement under section 313 of the said Code, it will be open for the Petitioners to make appropriate application before the learned Magistrate.

ii) Liberty is granted to the 2nd Respondent to apply before the learned Magistrate for expeditious disposal of the complaint. If older cases are not pending, the learned Magistrate is bound to give priority to the complaint.

iii) Petitions are disposed of in the above terms.

iv) Parties and the concerned Court to act on an authenticated copy of this order.

Judge.